IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.1080 of 1998
in
SPECIAL CIVIL APPLICATION No.738 of 1998

WITH
LETTERS PATENT APPEAL No.1283 of 1998
in
SPECIAL CIVIL APPLICATION No.4773 of 1998

..

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and
MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VALLABHVIDYANAGAR MAZDOOR UNION
Versus
STATE OF GUJARAT

Appearance:
LPA No.1080/98
Mr.D.S. Vasavada for the appellant.

LPA No.1283/ 98

MR DS VASAVADA for Appellant
MR K.M. PATEL for Respondent No. 2
MR M.R. Shahani for respondent no.3

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE
Date of decision: 28/01/99

COMMON ORAL JUDGEMENT : (Per B.C. Patel, J.)

These Appeals are preferred by Vallabh Vidyanagar Mazdoor Union, Ahmedabad and Akhil Bharatiya Audyogik Kamdar Sangh, Surat against the common judgment delivered by the learned Single Judge in Special Civil Applications Nos.738 of 1998 and 4773 of 1998. In all, three matters were heard together by the learned Single Judge, who held that Annexure 'E' to Special Civil Application No.4773 of 1998 being illegal and invalid, must be quashed and set aside and allowed the petitions being Special Civil Applications Nos.4773 of 1998 and 4810 of 1998. So far as Special Civil Application No.738 of 1998 is concerned, the learned Single Judge held that the same is not tenable in law and it must be dismissed.

2. So far as Letters Patent Appeal No.1080 of 1998 is concerned, it arises out of Special Civil application No.738 of 1998. The petitioner prayed for a direction to the respondents nos.1 and 2 to hold election in order to find out as to who represents the majority of the workmen. The prayer was for the purpose of declaring as to which Union should be declared as a recognised union. The learned Single Judge has pointed out that the petitioner Union is a registered union under Trade Unions Act, 1926. The appellant claimed that more than 50 % workmen of the employer are the members of the said Union and therefore, the appellant Union must get the status of a recognised Union. It appears that a representation was made to the Deputy Labour Commissioner vide letter dated 16.6.1997 to grant recognition. The information required by the Deputy Commissioner of Labour was supplied. However, no recognition was given. It appears that the appellant was informed by Deputy Labour Commissioner by letter dated 5.11.1997 that as per information received from the Kaira District Cooperative Milk Producers Union Ltd., besides the appellant Union, four other Unions were operating in the establishment of the employer. The appellant came out with the case that the plea of four Unions to be operating is false and therefore, the

request for a direction to hold election in order to find out as to who commands the majority.

3. So far as Special Civil Application No.4773 of 1998 is concerned, the employer challenged the order issued by the Deputy Commissioner of Labour dated 17.6.1998 directing to hold an election in order to find out as to which of the two unions, namely, "The Baroda Rayon Corporation Employees Union" or "Akhil Bharatiya Audyogik Kamdar Sangh", represents the majority of the workmen working with the employer. The employer contended that neither the Industrial Disputes Act nor any other Act empowers the Labour Commissioner or the Deputy Commissioner of Labour to issue such a direction to the employer. Considering the rival contentions of the parties, the Court expressed the views as aforesaid, against which the present Appeals are preferred.

4. Mr.Vasavada, learned advocate appearing for the appellants submitted that in industrial jurisprudence it is necessary to find out as to which is the Union enjoying majority when there are more unions. According to him the majority Union will have right to represent the case of the workmen and not the Union having minority workmen. He further contended that if the Union having minority representation is recognised, then the agreement arrived at between the employer and the Union enjoying minority representation will bind the other workmen, who are not the members, which would cause serious prejudice to the workmen who are in majority. It is further submitted by him that in view of the decision of the Apex Court in Food Corporation of India Staff Union v. Food Corporation of India & others, AIR 1995 SC 1344, it was necessary for the learned Single Judge to issue a direction to the Deputy Commissioner of Labour to hold election to find out as to who enjoys the majority and thereafter to direct the employer to recognise the Union enjoying majority. He also submitted that in view of the decision in Tamil Nadu Electricity Board v. TNEB Accounts and Executive Staff Union, 1980 II LLJ 440, the appellants were justified in filing the writ petition seeking directions.

5. Mr.Vasavada, learned advocate invited our attention to Schedule- V of the Industrial Disputes Act, 1947 ("the Act" for brevity), with a view to point out unfair labour practice. Item 15 of Schedule- V of the Act refers to refusal to bargain collectively, in good faith with the recognised trade unions. He further submitted that unless and until the union or unions are recognised, this cannot be put into practice. Therefore,

it is the duty of the employer to recognise the trade union having majority only.

6. As against this, on behalf of the respondents Mr.K.M. Patel, learned advocate, submitted that with regard to Vallabh Vidyanagar Mazdoor Union, Ahmedabad, members of Kheda Jilla Dudh Utpadak Sangh Ltd., have earlier filed Special Civil Application No.7481 of 1991 in this Court seeking similar relief by another union, i.e. Amul Dairy Karmachari Sangh Ltd. The Honourable the Chief Justice Mr.S. Nainar Sundaram (as he then was), on 22.7.1992 by a detailed order held that the petition cannot be entertained. The Division Bench pointed out that :

> "It is true that in the Code of Discipline there is a provision for recognition of Union. The verification of membership of the first petitioner- Union could have relevance only for the purpose of obtaining recognition for the first petitioner Union. But here we are asked to issue a writ of mandamus to respondents nos.1 and 2 directing them to verify the membership of the first petitioner Union. Legitimately, we are obliged to find out as to whether any legal obligation or duty is cast upon the respondents nos.1 and 2 in this behalf. Mandamus is a command by this Court for enforcement of such legal obligation or duty. Shri T.R. Mishra, learned counsel for the petitioners submits that the verification should be done by respondents nos.1 and 2 so as to settle the question of recognition and that would enable the first petitioner Union to assume the representative character to advance the cause of the workmen."

The Division Bench of this Court has further pointed out that :

> "We are not able to subscribe our support to this plea advanced by the learned counsel for the petitioners which plea has foundation only in convenience for the petitioners. When this Court, in exercise of powers under Article 226 of the Constitution of India, is called upon to issue a writ of mandamus, the prime most thing that should engage the attention of this Court is to find out as to whether there exists a legal obligation or duty cast upon the party against

whom the writ of mandamus is being asked for and correspondingly as to whether there is a legal right to such performance conferred on the party asking for such a writ. Patently, both the elements are lacking in the present case."

The Court ultimately said that

"Thus, we are obliged to dismiss this Special Civil Application ... "

7. So far as the rights of the workmen are concerned the Act takes care of. Subclause (P) of sec.2 defines settlement, which reads as under :

""Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer."

8. Sec.18 (1) of the ID Act indicates binding nature of the settlement and the persons who are bound by the same. Said section is reproduced hereinbelow for convenience :

"18. Persons on whom settlements and awards are binding - (1) A settlement arrived at by the agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

9. It is thus very clear that the settlement, if arrived at between the employer and the workman, otherwise than in conciliation proceedings, the same is binding on the parties to the agreement and none else. Thus, if a settlement is arrived at between the parties otherwise than conciliation proceedings, the majority Union is not to suffer because that will not bind them. In other words, the workmen represented by majority Union

will not be adversely affected and they can always take their dispute to the appropriate forum for redressal. If there are conciliation proceedings, then in accordance with the provisions of the Act, the same would be binding to the parties referred therein. The conciliation proceedings are proceedings under the Act and therefore, the agreement arrived between the employer and the workmen otherwise than in conciliation proceedings binds the parties to the agreement. The agreement arrived at may be because of the understanding between the employer and the workmen and therefore, the legislature has made it very clear that it will bind only to the signatories to the agreement and not others. But the conciliation proceedings are proceedings under the Act, where notice is required to be issued to all concerned and decision is to be rendered after hearing. Therefore, the binding nature, obviously, is of a different nature. The workman or workmen through their Unions, if more than one, can represent their case through their Unions and therefore, no prejudice is likely to be caused as apprehended by the learned advocate.

10. Mr. Patel, learned advocate appearing for the employer as well as Mr. Shahani, learned advocate for the Union submitted that so far as Letters Patent Appeal No.1283 of 1998 is concerned, Baroda Rayon Corporation Employees Union is the only recognised union. So far as the strength is concerned, at the relevant time, no documents were produced on record indicating the strength. Mr.Patel, learned advocate appearing for the employer submitted that in the petition it is pointed out on oath that since last 20 years, the Union is representing more than 2834 workers, who are the members of the Union, out of 2997 workers employed by the employer. It is pointed out that written authorisation given by 2784 workers individually in January 1998 and in the month of February 1998, 86 workers have also given authorisation to deduct membership subscription from their salary and to pay it directly to the Union concerned, namely, Baroda Rayon Corporation Employees Union. Mr.Shahani, learned advocate submitted that the same position continues in 1999 too for which he wanted to place a letter before the court addressed by the Union. But as that letter was not placed before the learned Single Judge, we do not consider it at this stage. Suffice it to say that 2834 workmen have issued letter of authorisation as contemplated under the provisions contained in subclause (kkk) of sec.7 of Payment of Wages Act, 1936, which reads as under :

"Deductions made, with written authorisation of

the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926)."

11. Mr.Patel, learned advocate submitted that under the Act, the employer is deducting the amount as requested by the person employed and the amount is remitted to the Union concerned. From this it is evident that the Baroda Rayon Corporation Employees Union can be said to be in majority. As against this Mr.Vasavada, learned advocate submitted that he has submitted a list of 2015 workmen, who have paid the amount of subscription to the appellant. He submitted that therefore, it is necessary that the majority should be found out.

12. In paragraph 10, we have given the figures and details of members of the Union, viz., Baroda Rayon Corporation Employees Union. Under check off system, majority of the workmen are sending their contribution as provided in the Payment of Wages Act, the details of which are mentioned hereinabove. Looking to the figures, it is clear that Baroda Rayon Corporation Employees Union is in majority.

13. Mr.Vasavda, further submitted that in view of the Supreme Court judgment it was incumbent upon the learned Single Judge to direct the Commissioner of Labour to hold an election. It is required to be noted that in para 2 of the judgment in Food Corporation of India Employees Union, AIR 1995 SC 1344 (supra), it is made clear that;

"... "the Food Corporation of India (FCI) and the Unions representing the workmen have agreed to follow the "secret ballot system" for assessing the representative character of the trade unions."

It is under these circumstances, the Court after hearing other unions pointed out as to how elections will be held. It is not the case of the appellant before us that the statute has made it incumbent upon the employer to recognise a union or a duty cast is upon the employer to hold election, when there are more than two unions. It depends upon the employer(s). We have come across several cases where there are more than 4 - 5 unions; all are heard by the employers and that may be in the interest of peace and good functioning of the industry.

It depends on the size of the establishment, area in which the establishment is operating and number of branches. Again it is required to be noted that it is a voluntary act on the part of the employer. It was pointed out to us that Gujarat Electricity Board ("GEB" for brevity) has recognised several unions. It depends on the area of operation, nature of work, nature of establishment, division, subdivision, circle, etc. GEB operates in the entire State of Gujarat. It is, therefore, very likely that the union may be districtwise or may be circle- wise or may be workwise and again that action being voluntary, it cannot be said that every employer should accept all the unions as recognised unions. We have earlier pointed out that no duty is cast upon the employer to find out who is in majority.

14. It is submitted before us that in case of Rajasthan State Road Transport Corporation and another v. Krishna Kant, etc., AIR 1995 SC 1715, the Apex Court held that the standard orders as framed under the Industrial Employment (Standing Orders) Act (20 of 1946) have no statutory force. Mr.Patel, learned advocate submitted that in view of several decisions of the Apex Court, only in case of public duty where public element is involved, the court can exercise jurisdiction under Article 226 of the Constitution of India. He submitted that the learned Single Judge was quite justified in dismissing the petition being Special Civil Application No.738 of 1998 as there was no question of public duty or public element.

15. In the case of Tamil Nadu Electricity Board (supra), the Division Bench of Madras High Court pointed out :

> "Admittedly, there is no statutory provision in this case dealing with the question of recognition or derecognition. Equally admittedly the Code of Discipline in Industry is not statutory. Notwithstanding this, it is conceded by the learned counsel for the appellant that the Code of Discipline in Industry does contemplate recognition and that it was only under that Code, recognition was applied for and granted. It is not disputed that the grant of recognition confers a status on a body like the respondent union to represent the workers in a particular category, with reference to their service conditions, with the management; in other words, it becomes a bargaining agent on behalf of the

> group of workers with reference to which it was recognised. Withdrawal of that statute or recognition will certainly bring about adverse consequences on a body like the respondent-union, and with reference to such adverse consequences, even an order of withdrawal like the one made by the appellant if it is illegal or is in violation of principles of natural justice. Certainly a body like the respondent- union can approach this Court under Art.226 of the Constitution of India."

14. It is under these circumstances the Court rejected the contention that the writ petition was not maintainable. In the instant case, there is no question of derecognition or taking away the rights of the employee. By a voluntary act, if rights are conferred upon the Union and such rights are taken away without hearing the union, certainly it can be said the members of the union are likely to be adversely affected by arbitrary act. When recognition is not granted from the very inception, the question of invoking this principle does not arise. The Court pointed out that there is no statutory provision dealing with the question of recognition or derecognition. Our attention is also drawn to a reported decision in case of Air Corporation Employees' Union and others v. G.B. Bhirade and others, 40 FJR 317. It was a petition under Article 226 of the Constitution of India for a writ in the nature of mandamus directing the respondents not to proceed with the recognition of 5th respondent union pursuant to the inquiry held by the 1st respondent and the directive contained in the Office Memo dated 19.12.1998 issued by 2nd respondent to 3rd respondent. The petitioner, trade union was registered some time in the year 1953 under the Indian Trade Unions Act, 1926, claiming to have overwhelming majority of the workmen including the Indian Airlines.

15. It seems that the question raised was not to grant recognition to 5th respondent union. The Bombay High Court pointed out that a petition under Article 226 of the Constitution of India not only lies against an authority that falls within the definition of "State" in Article 12, but also against a statutory corporation to enforce the performance of a statutory or public duty. As the Code of Discipline or the "consensus" referred, do not cast any statutory or public duty on the employer which is a statutory corporation, no petition under Article 226 would lie on the ground that the Code or

consensus have been violated by the employer. The Court further pointed out that :

"A petition under Article 226 can be maintained against statutory corporation in order to enforce the performance of a statutory or public duty. Apart from the fact that the petition, as framed against respondent must fail, once it fails against respondents nos.1 and 2, Mr.Buch has stated, even on merits, the petitioners are not entitled to succeed in this petition as against the 3rd respondent- Corporation for they have not been able to point out any statutory or public duty which the respondent- Corporation has violated. Whichever way one looks at it, therefore, the petition must fail against the 3rd respondent- Corporation."

16. Mr.Vasavda, learned advocate could not point out from the Act any provision casting duty on the employer to recognise a particular union or duty of the Labour Commissioner to hold election. FIFTH Schedule of the Act, no doubt refers to recognised union. However, in the Act there is no provision for recognising a union unlike Bombay Industrial Relations Act, 1946 ("BIR Act" for brevity). When the Act is silent and makes no specific provision conferring any special rights upon recognised union and at the same time when no duty is cast upon the employer to recognise a union having particular qualifications as recognised union, it can be said that one has to go by the Code of Conduct with a view to maintain discipline. If in one establishment, a union is operating with majority representation of the workmen and in another establishment when four unions are operating, it is difficult for us to say that the order passed by the leaned Single Judge is erroneous. Nor can it be said to be not in accordance with law considering the scheme of the Act. It is also required to be noted that the present cases are not governed by the BIR Act. This Act operates only in specified areas and with respect to specified industries in the State of Gujarat. Chapter III deals with registration of union and its rights. Sec.26A of the said Act provides that no employee shall be allowed to appear or act in any proceeding under this Act, except through a representative of the employees union. Thus, powers are conferred upon the union to act as a bargaining agent under the BIR Act. Even BIR Act is silent about recognition to majority. Reading the provisions under

the Act it is clear that no duty is cast upon the employer to hold elections to find out a union having majority. Therefore, the Appeals are required to be dismissed.

17. Both the Appeals are, therefore, dismissed with no order as to costs.

--//--
karim*